Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126

Before the
Federal Communications Commission
Washington, DC

In the Matter of	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6

Comments of the Pennsylvania Department of Education

On behalf of the schools and libraries in the Commonwealth of Pennsylvania, we would like to thank the Commission for this opportunity to provide comments on the proposed changes and other aspects of the E-rate program.

Pennsylvania has 1.814 million public school students in 659 school districts, vocational technical schools and charter schools; 327,000 nonpublic private school students in 2650 nonpublic schools; and 613 public libraries. While we have several large urban districts like Philadelphia and Pittsburgh, most of our applicants are small to medium sized, rural schools and libraries, with requests in the $20,000 - $40,000 range.

In these comments, we address the following issues:

A. Applicant Discount Choice Ruling
   - Online reimbursement option petition by AT&T and Verizon
   - 471 discounted billing selection by FRN
   - Removing specific ambiguities

B. Technology Planning and Plans
   - Applicant certification of technology plan approval
   - Development and submission of technology plans
   - Items included in technology plans

C. Waste, Fraud and Abuse Prevention and Reduction Measures
   - Transfer of equipment
   - Non-Annual funding for internal connections
   - Adjustment to the discount matrix

Reform of maintenance/network management provisions
Massive vendor and applicant outreach on high-cost, complex services
Better help desk support for eligible services
Reform of 470 process

D. Streamlining of Application Process
Computerized eligible services list
Submitting 486 certifications with Form 471

E. Needed Fixes and Clarifications
Timely issuance of appeal decisions and appeal FCDLs
Ability to change SPINs before FCDL issued
Remove 30% unsubstantiated rule
Reform of service substitution rules
Sharing of bandwidth for educational purposes
Rural/Urban designation modifications
Permanent February close of application window

F. Summary of Recommendations

A. APPLICANT DISCOUNT CHOICE RULING

We would like to thank the Commission for their recent ruling that provides applicants with the choice of receiving discounted bills or SLD reimbursement. A huge sigh of relief came over the applicant community when they learned that they no longer were going to be required to submit BEAR forms to seek reimbursement for discounts, but instead would receive direct discounts as the Commission originally intended in its May 1997 Order.

We realize that many service providers are resisting this change in the rules, as many have proposed discounted billing alternatives. We specifically oppose AT&T and Verizon's request to not discount bills but instead require applicants to submit online reimbursement requests. While this system is more advantageous than the BEAR reimbursement process, it is and should not be -- by any means – a replacement for discounted billing. We agree that one downside to the BEAR reimbursement process was the requirement that applicants pay 100% of the costs upfront, thus placing an extreme hardship on cash-strapped applicants. But the other major reason for providing applicants with discounted bills is that the applicant is not required to submit yet another form to the SLD. Applicants are already required to submit at least three forms to the SLD in order to apply for E-rate discounts, with the BEAR form being the fourth. By permitting vendors to not discount bills, the Commission is in no way helping applicants with streamlining the application process. A fourth form would continue to exist, it would just be directly through the service provider instead of the SLD.

We believe that after six years of the program during which service providers should have been "undertaking actions" to become discounted billing compliant, there should be no reason they are not prepared to take this step. The Commission granted them relief in the first few years of the program

because vendors weren't prepared to modify their billing systems. We urge the Commission to stand firm on their original ruling and finally permit applicants to receive discounted bills without further effort.

On a related matter, we applaud and support MCI's constructive recommendation to require applicants to choose their method of discounts on their Form 471 in order to provide vendors with ample notification through the Receipt Acknowledgement Letters (RALs) and Funding Commitment Decision Letters (FCDLs).

Verizon also seeks clarification from the Commission that service providers are under no obligation to provide discounted bills until after the 486 approval letter is received. Their point is well made, and we further urge the Commission to clarify that applicants who receive late 486 approval letters should not be forced to relinquish their right to choose discounted bills. In other words, because the applicant may have paid 100% of their July, August and September bills, they should not then be required to use the reimbursement method to receive their discounted funding.

Also, we ask the Commission to clarify that service providers do not have the choice to replace discounted billing with lump sum credits on bills. The Commission cited cash flow issues as a compelling reason for permitting applicants to have this option, and because of this reason, we believe that lump sum credits would defeat this purpose. We see no reason that lump credits should be prohibited, but the choice should be the applicants, not the service providers.

B. TECHNOLOGY PLANS/APPROVAL DATES

Technology plan formulation and approval has been an area in need of direction for several years and below we illustrate the current problems that applicants and states, as approvers, face on a yearly basis.

Applicant Certification of Tech Plan Approval

The Commission proposes to permit applicants to certify that their technology plan will be approved by the time services begin. While many commenters, specifically service providers, believe any change to the current certifications would be counter-productive to reducing waste, fraud and abuse, we disagree. While it appears to be small, the Commission's proposal is a much-needed change since the Form 486 filing is permitted, and encouraged, before services begin.

Currently, the SLD has been issuing the vast majority of FCDLs about two months prior to start of the funding year, but applicants who have not yet received confirmation from their states that their technology plans have been approved are left with no choice but to wait until their approvals are issued, thus pushing back the filing of their 486s. This problem will be further exacerbated in Year 7 when more and more

applicants will be eager to submit their 486s so their discounts can begin on their July bills – the first year applicants can choose discounts.

As a compromise to commenters who are concerned that the SLD will never know if the technology plan was approved or not, we believe the 486 should be modified to require applicants to certify that their technology plans have been submitted for approval, and require them to actually list the entity to which they have been submitted. That way, an applicant that receives their FCDL in April, but that has not yet received final approval of their technology plan from the state, will still be able to submit their 486 early and receive discounted bills from the start of services.

(Please note that there are comments included in this filing that also support the idea of placing all of the CIPA, technology plan, and invoice certifications on the Form 471, thus making the Form 486 an optional form for many filers. The previous comments also pertain to the streamlined 486 process.)

Development and submission of technology plan

Several commenters suggested that the Commission adopt rules stating that technology plans were required to be completed and/or submitted for approval prior to the Form 470 Request for Services being posted. While we understand the reasoning behind these suggestions – that applicants should only request bids on services contained in their technology plans – it is completely out of step with the real world of school planning and budgeting, and state approval processes.

In Pennsylvania, as in many states, school budgets aren't passed until May or June, thus leaving districts to struggle with how to complete the technology planning and budgeting process so far in advance of the funding year. In order to help alleviate this concern, the Pennsylvania Department of Education (PDE) requires technology plans to be submitted on or before April 30. This is not to say that plans are not developed until April. In fact, PDE begins assisting districts develop their plans in the fall.

But we believe it would be shortsighted for the Commission to require applicants to have technology plans completed prior to the posting of the Form 470. Form 470s are submitted in the September – early December time frame. To require applicants to have fully-developed technology plans, even unapproved technology plans, by fall would mean that schools would be developing plans in the spring and summer – a full 12 –14 months prior to the actual funding year. This is unrealistic, and would have the opposite effect of what the Commission, and certainly states, are seeking to achieve which is well planned, thoroughly developed plans for using technology in the classroom. We encourage districts to set aside a full six months to review their existing plans, assemble stakeholders and committee members, and align their technology goals with their strategic planning and educational goals.

Pennsylvania believes strongly that moving back the date by which districts must have technology plans developed will be counterproductive to the years of hard work and effort that Pennsylvania and other states have undertaken to develop a thorough process for technology planning that begins in the fall and ends no later than April 30 – not begins and ends on the fall. Technology planning should not be a 60 day process, which is what would happen if the Commission imposes earlier deadlines for tech plan development. The other unintended result will be for applicants to wait until the very last minute to post their 470s, which, in turn, will result in applicants submitting Form 471 the last week of the application window – a practice the SLD is trying hard to reduce.

Further, plans are due for other programs besides E-rate, and in many states, technology plans are no longer isolated plans, but instead are included in the district's overall, state-mandated strategic plans. With no administrative funding to assist with technology planning or plan approvals, we believe the Commission should not dictate when technology plans should be developed, and we urge the Commission to clarify that states should be provided maximum flexibility for technology plan development guidelines.

Items included in technology plans

We further urge the Commission to recognize that Centrex service is not a service that districts normally included in their technology plans, and this requirement be dropped. Technology plans are about ensuring that districts are prepared to use the Internet in the classroom, and as such, we find no plausible reason why Centrex service should be a technology plan requirement. In fact, even services once considered advanced, such as T-1 lines, are now considered as basic as POTS -- an essential to communications, not a new technology needed to enhance education.

C. WASTE, FRAUD AND ABUSE: CAUSES AND SOLUTIONS

There has been much attention recently given to supposed abuses of the E-rate program by applicants and vendors, and we support Congress' and the Commission's efforts to reduce or eliminate the causes for such abuse, as well as seek punishment for those responsible. We maintain, however, that such instances are very rare and not all applicants and service providers should be viewed as trying to game the system. Nor should additional rules, or extreme rule interpretations be implemented that will place yet further burdens on the 99% of applicants that are playing by the rules.

We believe that no single change in the program's rules will eliminate WFA, but a combination of the following will have a significant impact on program integrity.

Lowering of internal connections discounts

We strongly support the comments of the State E-rate Coordinators' Alliance's (SECA) and others that the discount matrix should be adjusted for priority 2 services so the maximum discount permitted is 70%, if not less. Under the current rules, the greatest incentive to abuse the program lies at the 80 and 90% discount levels where vendors prey on understaffed, unknowledgeable, high discount applicants. At the same time, those same poor applicants see it as a disincentive not to apply for costly equipment each year, regardless of whether it's needed. Paying ten cents on the dollar is a sale that's too good for anyone to pass up. We urge the Commission to adjust the matrix so the maximum discount permitted for internal connections is 70%, and not support the Waste, Fraud and Abuse's recommendation of an 80% maximum discount level.

In Pennsylvania, there are poor districts, yet not a single school district has all of its buildings receiving a 90% discount. In our experience it is those non-90% schools that lack the adequate infrastructure to support high-speed bandwidth. Those districts have wired their 90% school buildings with E-rate and other significant state and federal funding, and eagerly are awaiting the year when funding is available to wire their 60% and 80% discount schools.

By lowering the maximum discount for internal connections, the results would be twofold – the incentive to purchase unneeded product would be greatly reduced, and discounts would be available to other poor, non-wired schools.

Non-annual application period for internal connections

We support restricting building-level entities from receiving discounts on Internal Connections for at least two years. The prohibition should be site-specific, thus not to penalize an entire district for a school that has received funding in recent years. Further, we realize that many entities have existing maintenance agreements that classify as priority two services, and the Commission likely will want to create a special exception for these types of services. We caution the Commission, however, that the current implementation of maintenance eligibility has become wrought with abuse and should be overhauled entirely as described below.

Again, we believe this change will remove one of the incentives for entities to continually apply for equipment they don't need, but also will free additional funding for other applicants.

Limiting transfer of equipment

Previously, the Commission considered the concept of limiting the transfer/replacement of equipment to three years from date of delivery, suggesting that this rule would prohibit applicants from applying for discounts on equipment for their highest-discount schools with the intention of simply moving that deeply discounted equipment to a school not deserving of discounted equipment, or simply replacing equipment each year with the newest and bigger model. Although we believe this type of activity exists, we believe it is very rare and that most such occurrences are done out of current technology needs of the applicant.

Several commenters disagreed with this concept, citing that the Commission should not intrude on local decision makers' ability to make infrastructure/equipment decisions.

As a compromise, we suggest a time limit on moving or replacing E-rate discounted equipment unless the applicant has received prior authorization from the SLD. In Pennsylvania, we have a similar policy, where after a technology grant has been awarded, an applicant may purchase equipment or services in a different budget category that was originally listed, but first they must submit such a request in writing providing justification of the request and await Department of Education written approval. The approval then becomes part of the official file for that grant, both at the state and at the district-level, and provides coverage for the district during their school audits.

Whatever policy is finally made, it will come as a relief to most applicants. Currently there is no set policy for transfer of equipment, yet it is a major issue of investigation during the applicant audits. This creates the question, how can schools be audited for a policy that does not exist?

Maintenance should be reformed

As described above, one area of the program that has been a boondoggle for abuse is the broad eligibility of maintenance. While we realize that applicants such as New York City cite in their comments how important maintenance is on their E-rate discounted equipment, we believe the current definition of maintenance is too broad. Maintenance should be a minimal recurring fee that is paid to the equipment vendor or installer to fix the equipment should it break, similar to a warranty agreement. But under the current definition, vendors are charging for equipment, then tacking on a high priced maintenance agreement that provides the applicant with virtual 24/7 onsite support. Similarly, internal wiring/LAN network maintenance has become a huge siphon of funds from the program, as networking companies are paid hundreds of thousands of dollars to maintain local area networks in every school building, so districts don't have to hire technology support staff. Simply put, maintenance has become the cash cow of E-rate.

To those who say that E-rate should pay for these maintenance agreements because it's in the best interest of the program to ensure that E-rate discounted equipment is maintained and working properly, we respond that E-rate cannot be all things to all people. Where does any responsibility fall on the part of the applicant to monitor and maintain their equipment and networks? We certainly hope the answer is not that applicants originally had to pay 10% for the equipment, pay for the cost of electricity and staff development, and cost of the applications that reside on the network.

In Pennsylvania, before any funding is provided to a district for technology, districts are required to document how they plan to sustain the equipment or network. Simply stating that they are going to rely on another grant is not sufficient. Grant dependency is an addiction and by E-rate funding all-encompassing maintenance agreements, it is feeding this addiction. There needs to be sustainability at the local level that does not rely on outside funding sources, including E-rate. *E-rate cannot be all things to all applicants, and maintenance is a great example.*

Massive vendor and applicant outreach, particularly on dark fiber, on-premise priority 1 services and equipment, maintenance/network management

The areas of the program which seem to be generating the most interest, confusion and new eligibility conditions are surrounding the lease of dark fiber networks, on-premise priority 1 equipment and services, and network management. As such, we encourage the Commission to direct the SLD to perform wide-reaching vendor and applicant training on these areas of eligibility. Not only would the quality of applications for these services improve, but both applicants and vendors would know the boundaries and nuances of what is eligible and what is not – thus reducing abuse in these areas.

Eligible services team to assist applicants and vendors

We applaud and wholeheartedly support SECA's recommendation to create an eligible services team that can provide intensive counsel to applicants and vendors on eligibility issues. The current Client Services Bureau only provides a reading of what is contained in the eligible services list, with no further advice on application preparation, what to avoid, suggestions, etc. SECA's proposal is an outstanding concept and we urge the Commission to push the SLD in this direction.

Reform of 470 process

We concur with the comments of E-rate Central that E-rate's rules are getting much more stringent when it comes to competitive bidding and procurement. We are seeing constant modifications or interpretations to the competitive bidding rules, all which require more work on the part of the applicant, in an apparent effort to try to control abuse or fraud. The problem is that the competitive bidding process contained in

the Form 470 does not work and therefore the Commission and the SLD are trying to fix a problem by tightening the noose on a non-effective solution.

In order to foster competition and ensure that pre-discounted prices were as low as possible, the Commission established a requirement in its original Order, that mandated applicants to competitively bid the services for which they were seeking discounts for at least 28 days on the administrator's website. While we applaud the Commission's *goals* of this requirement, we believe that the posting of services has not produced the intended outcomes. Six years' experience has proven that very few, if any, entities receive viable bids as a result of their Form 470 postings. In fact, most entities do not receive bids from their incumbent providers, let alone from competitors. What the 470 has produced is a mechanism by which any vendor - from computer salesmen to stadium bleacher vendors - can access the phone, fax and/or e-mail address of 36,000+ entities. These solicitations usually have absolutely nothing to do with the services requested on the 470 and the form's contact is left spending valuable time trying to get off e-mail lists, fax lists or the phone.

Also, at the two most recent train-the-trainers sessions, the SLD cited the primary reason for funding denials is applicants' inability to comply with the E-Rate Program's competitive bidding requirements, particularly the 28-day window.

This has caused applicants to view the Form 470 as merely a stumbling block and meaningless administrative burden to achieving discounted services rather than an opportunity for broader access to relevant and competitive services at competitive prices, yet remains the most common reason for denial.

It is clear, competitive bidding will achieve cost savings if many vendors compete for the business. But because vendors -- vendors that actually supply the products/services listed on the 470 -- aren't responding to bids, the SLD is not seeing the cost savings as the Commission originally had hoped.

We, therefore, propose an alternative to the Form 470 that we believe will achieve the goals set forth in the original Order. The alternative mechanism would continue to maintain the administrator's website, but instead of applicants posting Form 470s listing services they seek, the website would contain a powerful database of vendor information, including contact information, zip codes served, and services offered. In order for vendors to have their information posted to the site, they first must pass a qualification test whereby the program administrator would ensure that their range of prices was in line with the marketplace. The prices would not be shown on the website to preserve confidentiality.

Applicants, then, would be required to solicit at least three proposals from vendors from the administrator's website serving their geographical area or purchase services from a state or federal master contract.

On the Form 471, the applicant would indicate to the SLD whether they had used a state or federal master contract (and cite which contract was used), or whether they had signed an agreement with an SLD pre-qualified vendor.

This approach is quite similar with several states' "Invitation to Qualify" state procurement provisions which pre-qualify vendors, for which schools and state agencies submit their detailed proposals in order to receive detailed pricing. It also is similar to what several states require for competitive bidding, whereby the schools must take the initiative to contact at least three vendors to seek prices.

If there are not three vendors providing the relevant services within the applicant's geographic location, the applicant would cite (and the SLD could verify) this on the Form 471. And certain an applicant learning there are not three vendors providing the service is a much better alternative than no vendors responding to a Form 470 posting on the SLD website.

By replacing the 470 with a detailed vendor/services listing, it not only removes a common denial barrier, but also greatly expands competition. We envision not only schools and libraries using this website, but also any other business or non-profit that is interested in what services and providers exist in their area, thereby fostering the competitive marketplace for eligible applicants, but all other ineligible users from across the country.

In addition, by having the SLD pre-qualify vendors and a range of prices, it would provide them with a mechanism to deal with cost-reasonableness – a well-known, current weakness in the program.

D. STEAMLINING OF APPLICATION PROCESS

Computerized eligible services list

The general eligible services list as it exists today is immense and quite difficult for the average E-rate applicant to understand and state-level coordinators to explain. We have understood for three years that a Program Integrity Assurance (PIA)-only list exists containing approved products and services and is what each entity's Form 471 Description of Services is judged against. We believe this detailed list should be made available to applicants, and should be incorporated into the online 471, to the fullest extent possible.

Many commenters, particularly service providers, expressed that it would be administratively impossible for both vendors and the SLD to maintain such a comprehensive list because of the thousands upon thousands of individual products and models available from each vendor. We believe that there is middle ground the SLD could achieve by capturing general products and services – as they currently do – without requiring vendors to submit thousands of items. Certainly, Item 21 attachments and PIA reviewers do not require applicants to detail which one of BellSouth's five different classes of Centrex services or their hundreds of iterations the applicant will be purchasing,[1] or similarly Verizon's four Centrex classifications or their 70-140 separate features.[2] We urge the Commission to take this challenge, as the difficulty in establishing such a list ultimately will be far outweighed by the benefits to both applicants and the SLD.

Allow for all 486 functions to be made on Form 471, thus making form 486 optional

As the Form 486 exists today, it serves three purposes: tell the SLD to turn-on-funding, indicate what entity approved the technology plan, and certify the applicant is CIPA compliant. We agree with SECA and the Year 3 E-rate Task Force's recommendation that the 486 functions should be integrated with the 471, and if the applicant so chooses, they could simply provide all of the information on the 471 and not be required to submit the 486. The 486, of course, would remain as a usable form for entities that were not yet CIPA compliant, did not yet have an approved technology plan, or did not wish for the SLD to automatically pay any invoices that were received. By making the 486 optional, it would create significant timesavings to both the applicant as well as the SLD. And as stated previously, it will provide the all-important 486 approval earlier than ever, thus permitting service providers to discount bills from start of services – a practice we expect to explode in Year 7 due to the Commission's recent applicant-discount choice ruling.

E. NEEDED FIXES AND CLARIFICATIONS

More timely issuance of appeals and appeal FCDLs

While we appreciate the SLD's and FCC's recent attempts to reduce the backlog of appeals from previous years, we still are concerned at the length of time it takes for any appeal to be considered and, if meritorious, ultimately funded. Receiving a funding commitment letter before the funding year begins is

[1] See *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Joint Comments of BellSouth Corporation and SBC Communications, Inc., at 7 (filed April 5, 2002).
[2] See *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Verizon Comments, at 7 (filed July 21, 2003).

as imperative during the regular wave cycles as it is during the appeal process. Waiting a year for a funding commitment letter, which is the current reality, places applicants' technology planning efforts on hold and in many cases, is too late (thus resulting in some of the unspent funds the Commission is concerned about). We believe that in a program where applicants are given very narrow windows to file forms and appeals, there should be similar rules on appeal decisions and funding, such as 60 days for a decision. In addition, funding commitment decision letters for meritorious appeal decisions should not be held and then mailed in batches. We have seen regular cases that it takes 3 months, and sometimes up to a year, after an appeal is decided for an FCDL to be issued. We believe the FCDLs should be mailed with the next funding wave (regardless of funding year) or within 30 days of the appeal decision letter date at the latest.

Pre-Commitment SPIN changes should be permitted.

As the SLD has stepped up their efforts to scrutinize requests for discounts, we have seen several cases where applicants are left dangling while their service providers are being investigated. While we understand and support the notion of suspicious vendors receiving closer scrutiny, we believe applicants that were not involved in such activity should be permitted to change service providers before a funding decision is made.

Currently, affected applicants have two choices. 1) Cancel the FRN containing the targeted vendor's SPIN and hope that the remaining FRNs are then processed without further delay. 2) Wait months, if not longer, for the SLD to take action on the FRN. In order to expedite the process, and provide applicants with a mechanism to rid themselves of a vendor that is under the SLD's arm of investigation, applicants should be permitted to change service providers, anytime after the Receipt Acknowledgement Letter is received. Of course, where applicants have engaged in behavior that violated program rules, we agree that they should not be permitted to change SPINs. By permitting such SPIN changes, the Commission and the SLD will finally recognize and be able to provide relief – pre-commitment – to applicants who just so happened to have signed agreements with vendors that may have acted inappropriately on another applicant's application.

Reversal of SLD's 30% Unsubstantiated Rule

Pennsylvania agrees with the comments of Alaska, Illinois and SECA that the SLD's current implementation of the 30% ineligible rule that denies applicants who include a dollar amount on their application that is more than their Item 21 attachments show, is unfair and contrary to all previous years' 30% ineligible policies. In their comments, SECA clearly spells out the issue at hand:

> The Alliance submits that this implementation of the "30 Percent Policy" - one which punishes miscalculations and legitimate errors in estimating future costs - is contrary to the program's goals and does little to support its efforts to address waste, fraud and abuse. The program has several other internal checks and balances to assure that only legitimate costs are funded, including checks at the 486, BEAR, SPIF and other reviews that substantiate and re-affirm actual expenses. Also, service providers and applicants are fully aware that they are subject to post-BEAR audit reviews to substantiate any dispersed funds.
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> In its continuing efforts to address waste, fraud, and abuse, the FCC should continue to allow the Administrator some limited latitude to deny entire funding requests where they believe blatant price inflation has occurred. However, to intentionally deny applicants in the "30% unsubstantiated" group their rightful funding - due to simple mistakes for which applicants are quickly willing to correct - is contrary to the goals of the Telecommunications Act. The Administrator's past practice was much more appropriate - reviewers lowered the request to the substantiated amount of eligible services - miscalculations and mathematical errors were adjusted and remedied in the review process.

We urge the Commission to reverse this new and never before announced policy and revert back to the previous years' policy that was to deny an FRN if 30% or more of the FRN was for ineligible services.

Permit changes or upgrades to service in mid-year

We strongly encourage the Commission to broaden the current service change policies. Currently, applicants can only change services in the most very narrow of circumstances, and are prohibited from upgrading such services in mid-funding year. Because of the current policy, applicants' hands are tied from implementing technologies they need, and subsequently, additional funding goes unspent for that funding year.

Given the significant delay between the filing of the Form 471 and the receipt of services, the prices of services and equipment may have changed, and/or newer products with similar or better functionalities may be available. In addition, additional funding may have become available through other sources, enabling the purchase of greater bandwidth or services.

We believe the Commission should permit applicants to upgrade their services or equipment in mid-funding year. As long as their funding commitment cap was not exceeded, applicants should not be penalized for investing in greater bandwidth, for example, simply because they need to wait until the following funding year. A written notice to the SLD, which describes the change/substitution, would be made, and as long as the upgrade or change was permitted under local or state procurement rules, the change would be granted. Again, this scenario is very similar to the budget/contract revisions that are permitted under Pennsylvania program guidelines, where an applicant simply sends a request to the

Department, and upon approval, a written approval is sent to the grant awardee and kept with the official state file for audit purposes.

Just as the original SPIN change policy restricted applicants during the first three years of the program, the current service substitution policy is having the same effect. We encourage the Commission to understand applicants' need to change or upgrade services in mid-funding year, beyond simple equipment substitutions and grant relief as soon as possible.

Rural/Urban designations

We believe the Commission originally created the discount matrix with an urban and rural column because it is believed that services were more costly in rural areas. While we completely agree that the cost for services in remote areas may be higher, we have disagreed, and continue to disagree with the Commission's current determination of which schools and libraries are considered rural and which are considered urban.

Currently, the rules state that designations are made by using the Metropolitan Statistical Area (MSA) codes which basically say that if your county is located in or near a city or largely populated area, your entire county is deemed to be urban. As Pennsylvania has commented in several previous filings, this classification is seriously flawed because it inaccurately classifies more than 10 of Pennsylvania's 67 counties as urban.

We further are concerned, as we have learned that the Office of Management and Budget has adopted and will be replacing the current MSAs with a dramatically new definition of metro and non-metro. There soon will be three separate categories: 1) Metropolitan Statistical Areas, 2) Micropolitan Statistical Areas - collectively called Core Based Statistical Areas and 3) Areas Outside Core Based Statistical Areas. Our analysis of the new regulations, which take effect in 2003, indicates the new classifications only will further exacerbate the current misclassification of rural/urban counties under the E-rate program.

If the Commission truly is interested in providing deeper discounts to schools and libraries in areas where costs are higher, we encourage them to find a better definition of high-cost. Until such a solution is found, we believe the Commission should permit applicants to file for exemptions from their urban misclassification in order to receive the additional 10% E-rate discount, or the Commission should combine the urban and rural columns from the discount matrix and simply use one discount for the entire discount band. To continue to disenfranchise misclassified schools and libraries without permitting any process for appeal is not fair to the hundreds of entities in these affected counties nationwide.

Sharing of bandwidth

We applaud the Commission for broaching this difficult issue, as it is one that many schools have raised since the inception of the E-rate program. Their question is, in essence, what would be the harm of sharing unused bandwidth with community centers, for example, if no additional costs were incurred to the fund? In addition to the issue of wasted bandwidth, many networks and educational institutions are trying to provide an education environment where students can access files and work after the school doors close.

For example, one large urban district in Pennsylvania is trying to provide a seamless educational environment in order for students to leave school at regular time and go to the local community center to gain access to the computer files stored on the District's network. Under the current rules, the District will have to cost-allocate a portion of their E-rate request for the ineligible locations. The question that is asked by the District and other applicants on a regular basis is, "why should we have to reduce our funding request when this bandwidth is just sitting idle after the school day ends anyway?"

With the proper safeguards in place, we support the concept of being able to share E-rate discounted bandwidth with certain non-eligible entities during off-school hours as long as the bandwidth is used for educational purposes. Those safeguards, however, will be the key to ensuring that demand to the fund is not increased due to this provision, and that the entity does not initially request more than it needs for educational purposes.

We agree that these safeguards, as the Commission suggests, should include:

- That the school or library request only as much discounts for services as are reasonably necessary for educational purposes;
- The additional use would not impose any additional costs on the schools and libraries program;
- The services to be used by the community would be sold on the basis of a price that is not usage sensitive; and
- The use should be limited to times when the school is not using the services.

Further, we suggest the Commission consider that the entities receiving this excess bandwidth be non-profit entities with a robust educational program, and be considered on a case-by-case basis by the SLD. Of course, equipment needed to connect these entities to the network would not be E-rate eligible in any way.

As far as how to ensure that the fund is not adversely affected, we suggest a condition that applicants filing to share excess bandwidth show payment records from previous years as proof that their current request was not increased because of their intention to share their bandwidth.

As the Commission is searching for a way to control waste of program funds, we hope they also will consider there is a waste of the services that the program is funding, that is, bandwidth that is not being used between the hours of 3 p.m. and 8 a.m. We urge the Commission to consider a limited pilot project for sharing excess bandwidth, with extremely tight oversight and rules.

Early – mid-February window close be permanent

We concur with SECA that the arbitrary Form 471 window closing dates makes it difficult for applicants and trainers to plan, and if the closing date is in mid-January, makes it difficult for some schools, and most libraries to use the current year's data for Free & Reduced Lunch as state's often do not post current year's data until the end of January. We urge the Commission to strongly consider SECA's recommendation that the window closing date should permanently be the Thursday before President's Day, 11:59 p.m. Eastern Standard Time.

F. SUMMARY OF RECOMMENDATIONS

Applicant Discount Choice Ruling

- We oppose AT&T and Verizon's request to grant service providers' the choice to replace discounted bills with a vendor-developed reimbursement process and urge the Commission to stand firm on their original ruling and finally permit applicants to receive discounted bills without further effort.

- We urge the Commission to clarify that applicants who receive late 486 approval letters should not be forced to relinquish their right to choose discounted bills.

- We ask the Commission to clarify that service providers do not have the choice to replace discounted billing with lump sum credits on bills. Such choice, rather, would be that of the applicant.

Technology Planning and Plans

- We believe the 486 should be modified to require applicants to certify that their technology plans have been submitted for approval, and require them to actually list the entity to which they have been submitted, as opposed to requiring applicants to certify that they *have been* approved. That way, an applicant that receives their FCDL in April, but that has not yet received final approval of their technology plan from the state, will still be able to submit their 486 early and receive discounted bills from the start of services.

- We urge the Commission to clarify that states should be provided maximum flexibility for technology plan development and that applicants are encouraged, but not required, to have their technology plans completed by the time the 470 is posted.

- We further urge the Commission to recognize that Centrex service is not a service that districts normally included in their technology plans, and to drop this requirement. Without such recognition, applicants are subject to a negative audit finding.

Waste, Fraud and Abuse Prevention and Reduction Measures

- We urge the Commission to adjust the discount matrix so the maximum discount permitted for priority two services is at least 70%.

- We support restricting building-level entities from receiving discounts on Internal Connections for at least two years.

- We support a time limit on moving or replacing E-rate discounted equipment unless the applicant has received prior authorization from the SLD.

- We strongly urge the Commission to reform the definition of eligible maintenance services.

- We encourage the Commission to direct the SLD to perform wide-reaching vendor and applicant training on the areas of dark fiber, on-premise priority 1 services and equipment, and maintenance/network management.

- We encourage the SLD to create an eligible services team that can provide intensive counsel to applicants and vendors on eligibility issues before and during the application window.

- In light of the fact that the 470 process has not produced the intended results, we support reforming the 470 process to require vendors to post pre-approved services and applicants to seek proposals from listed vendors.

Streamlining of Application Process

- We support the limited use of an online, detailed product/service listing that applicants can use when submitting their Form 470s and 471s.

- We support the notion of integrating the 486 functions with the 471, and if the applicant so chooses, they could simply provide all of the information on the 471 and not be required to submit the 486.

Needed Fixes and Clarifications

- We urge the FCC to establish a clear deadline of 60 or 90 days for FCC and SLD appeal decisions, and no more than 30 days for the resulting FCDL.

- We urge the Commission to reverse the new, never announced, 30% unsubstantiated policy and revert back to the previous years' policy.

- We encourage the Commission to understand applicants' needs to change or upgrade services in mid-funding year, beyond simple equipment substitutions, and grant relief as soon as possible by liberalizing the service substitution rules.

- We ask the Commission to permit applicants to file for exemptions from their urban status in order to receive the additional 10% E-rate discount, or to combine the urban and rural columns from the discount matrix and simply use one flat discount for the entire discount band.

- We support the concept of being able to share E-rate discounted bandwidth with certain non-eligible entities during off-school hours as long as the bandwidth is used for educational purposes. We urge the Commission to consider a limited pilot project, on a case-by-case basis, with extremely tight oversight and rules.

- We urge the Commission to strongly consider SECA's recommendation that the window closing date permanently should be the Thursday before President's Day, 11:59 p.m. Eastern Standard Time.

Respectfully submitted,

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